IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

WP(C).No. 28834 of 2006(G)

PETITIONER:

SARATH MOHANDAS, AGED 21 YEARS,
S/O. A.N. MOHANDAS, ARAYIL SARATH BHAVAN,
THUKALASSERY, THIRUVALLA P.O.

BY ADV. SRI.V.V.NANDAGOPAL NAMBIAR
SRI.T.P.PRADEEP

RESPONDENTS:
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1. **VICE CHANCELLER,**
   UNIVERSITY OF KERALA, THIRUVANANTHAPURAM.

2. **CONTROLLER OF EXAMINATION,**
   UNIVERSITY OF KERALA, THIRUVANANTHAPURAM.

3. **UNIVERSITY OF KERALA,**
   REP. BY THE REGISTRAR, UNIVERSITY OF KERALA,
   TRIVANDRUM.

BY ADV. SRI.M.RAJAGOPALAN NAIR, SC, KERALA UTY.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.C NO.28834/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE INTERIM ORDER DT.5.5.06 IN WP(C) NO.12383/06.

EXT.P2:- COPY OF THE JUDGMENT IN WP(C) NO.12853/06 DT.27.7.06.

EXT.P3:- COPY OF THE MEMO DT.19.6.06.

EXT.P4:- COPY OF THE MEMO DT. 18.9.06.

EXT.P5:- COPY OF THE COMPLAINT DT.10.10.06.

/TRIE COPY/

tss

C.N.RAMACHANDRAN NAIR, J.

WP(C) NO. 28834 OF 2006

Dated, this the 19th day of February, 2007

J U D G M E N T

Petitioner was caught involved in malpractice while writing the 6th semester examination in Medical Electronics as part of the final year examination in B.Sc Electronics. Even though disciplinary proceedings were initiated immediately after detection of malpractice, the same was not finalized. When the examination was held in next year, i.e. in May 2006, petitioner filed WPC 12383/2006 in this Court and this Court under interim order dated 05/05/2006, permitted the petitioner to write the examination in the very same subject i.e. in Medical Electronics. Accordingly, petitioner wrote the examination and was allowed to attend the viva-voce, which the petitioner was not allowed to participate during final examination held in 2005. The result of the final examination written by the petitioner are not published till now. Petitioner was issued the final proceedings vide Ext.P4 dated 18/09/2006, where under the University debarred the petitioner from appearing for any examination held earlier than in

July 2006. Against this order, petitioner approached this Court through this writ petition (civil).

2. Even though the learned counsel for the petitioner contended that petitioner was not engaged in the malpractice, I do not think that this Court will be justified in holding so because petitioner has admitted the offence and sought for pardon, copy of which is produced by the University as Ext.R3(c). According to the petitioner Ext.R3(c) is written at the request of the University. The University in the Counter Affidavit conceded that University has suggested such request for pardon, even though it was not compelled upon. It is to be noted that the gravity of malpractice is not evident from any of the proceedings furnished by the University in this Court. It is not even clear whether the copying was attempted from the recordings in the calculator or from the writing on calculator cover. Punishment has to be necessarily in proportion to the gravity of the offence. Unless nature and extent of malpractice is established, it would not be possible to impose punishment commensurate with the gravity of

the irregularity. The punishment for malpractice is for minimum one year debarring from future examinations as attempted by the University. In fact, the punishment given to the petitioner is debarring him for appearing from examination for 14 months from the date of malpractice. Further more, on account of delay in taking action, the effect of debarring by 14 months has gone to nearly two years. Of course, the punishment is effective only if at least one year debarring is given. Since the final examinations are held only once in an year, debarring vide Ext.P4 is obviously with the object of preventing the petitioner from writing the next year examination. However, since the University has delayed in finalization of disciplinary action, the result of examination written by the petitioner in May 2006 under interim orders of this Court is not published till date. Therefore, petitioner could not gone for PG course or any other course for the academic year 2006-2007. In other wards, even if the result of the examination written by the petitioner in May 2006 is published now, petitioner has to suffer loss of two academic years. In the circumstance, I dispose of the writ petition by upholding Ext.P4, but limiting the

debar up to April 2006, so that examination written by the petitioner in May 2006 under interim orders of this Court stands valid. University is directed to publish the withheld result of the final year examination, written by the petitioner in all subjects, within one month from the date of production of a copy of this judgment and issue mark list.

This writ petition is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE)

jg